

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

v.

NORTH BAY REGIONAL CENTER.

OAH No. 2022120385

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, who served as the hearing officer, heard this matter on March 13, 2023, by videoconference.

Beth DeWitt, Director of Client Services, represented North Bay Regional Center.

Claimant was represented by his mother. Claimant was not present at the hearing.

The record closed and the matter was submitted for decision on March 13, 2023.

ISSUE

Is claimant eligible for regional center services?

FACTUAL FINDINGS

Procedural Background

1. Claimant is almost six years old and lives with his family. He attends a public elementary school.
2. Claimant's mother referred him to North Bay Regional Center (NBRC) for an eligibility assessment, reporting that he had been diagnosed with attention deficit hyperactivity disorder (ADHD), was suspected to have autism spectrum disorder, and was receiving special education services for speech and language impairment.
3. An eligibility team that included a physician and a psychologist met to review the evidence and determined that claimant did not satisfy eligibility criteria. NBRC issued a Notice of Proposed Action to claimant's family on November 21, 2022, stating that NBRC had found claimant ineligible. A Fair Hearing Request was sent on December 2, 2022, challenging NBRC's determination.

Eligibility Determination

4. NBRC met with claimant and his mother on August 11, 2022, obtained school and medical records, and referred claimant for a psychological assessment.
5. Psychologist Tracy Ong, Ph.D., conducted the assessment on October 17, 2022. She reviewed school records and reports, medical records, interviewed claimant's

mother, and performed diagnostic assessments. Dr. Ong noted that due to his distractibility, claimant did not complete all subtests of the intelligence assessment tool she administered. He scored in the average range on the three subtests he completed.

6. Dr. Ong concluded that claimant satisfies the diagnostic criteria for autism spectrum disorder, with language impairment. She also endorsed his prior diagnosis of ADHD.

7. Psychologist Todd Payne, Psy.D., was on the eligibility team. He testified at hearing to explain NBRC's decision. The team reviewed all records and notified claimant's mother of the decision to deny eligibility. Claimant's mother provided updated school records, which the team reviewed, but these records did not change the team's opinion that claimant is not substantially disabled.

8. The eligibility team determined that due to his autism, claimant has significant functional limitations in the realms of self-care and self-direction. The team also determined that claimant did not have significant functional limitations in the realms of mobility, expressive and receptive language, and learning.

9. Dr. Payne discussed the team's determination that claimant does not have significant functional limitations in receptive and expressive language. Claimant's school district has performed two speech-language assessments, most recently in November 2022. In the most recent assessment report, the speech-language pathologist concluded that claimant demonstrated age-appropriate receptive, expressive, and pragmatic language abilities. He was deemed to continue to demonstrate an articulation disorder (lateral lisp) and was found eligible for continuing

speech therapy. The eligibility team concluded that claimant's articulation disorder does not constitute a significant limitation and is not likely related to his autism.

10. Dr. Payne discussed the team's determination that claimant is not significantly disabled in learning. The school district performed psychoeducational assessments of claimant in January 2021 and again in November 2022. In the earlier assessment, claimant obtained a below average early learning composite score on the Mullen Scales of Early Learning diagnostic tool. In the more recent assessment, claimant scored in the average range on all subtests and obtained a composite score in the average range on the Kaufman Assessment Battery for Children, Second Edition. An Academic Assessment Report prepared by the school district in October 2022 reflects that claimant scored within the low average or higher range in most skills, with a few scores in the low range. The author noted that the areas where claimant scored lowest were mainly areas "within the developmental expectations" for children in kindergarten, and that he had shown progress in many areas compared to the prior year's testing. Dr. Payne explained that claimant's performance on these standardized tests does not suggest that he has significant functional impairment in his capacity for learning.

11. Dr. Payne acknowledged that the criteria for eligibility can be frustrating for parents of high-functioning autistic children such as claimant, who have significant challenges but are nonetheless ineligible for regional center services.

12. NBRC emphasized that claimant can seek reassessment at any time, should the family obtain new evidence or should claimant's functioning diminish relative to his peer group.

Claimant's Evidence

13. Claimant's mother reported that claimant has had significant behavioral issues since he was two years old. He was asked to leave multiple daycares due to his aggressive behavior. Claimant has been approved for Supplemental Security Income (SSI) benefits based on his autism.

14. Claimant attends a general education kindergarten class. Claimant continues to receive special education services for speech and language, as well as for behavioral issues (under the category other health impairment). Claimant's Behavior Intervention Plan notes that his problem behaviors (elopement, noncompliance, disruptive behaviors, and inappropriate peer interactions) impede his learning.

15. Claimant's mother explained that claimant has difficulty making it through the school day every day. He struggles staying focused in class. He has difficulty in less structured settings, such as on the playground. Claimant is sensitive to other children invading his space, and he can misperceive their intentions. Claimant's mother receives frequent telephone calls from his school about his aggression and other behavioral issues.

16. Claimant's mother seeks regional center eligibility because she is striving to provide the best resources possible to assist her son.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and

services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. A developmental disability is a disability that originates before an individual attains age 18, is likely to continue indefinitely, and constitutes a substantial disability for that individual. (Cal. Code Regs., tit. 17, § 54000, subd. (b).) The term "developmental disability" includes intellectual disability, autism, epilepsy, cerebral palsy, and what is commonly referred to as the "fifth category." (Welf. & Inst. Code, § 4512, subd. (a).) The fifth category refers to "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (*Id.*)

3. Pursuant to section 4512, subdivision (f), the term "substantial disability" is defined as "the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: (1) Self-care. (2) Receptive and expressive language. (3) Learning. (4) Mobility. (5) Self-direction. (6) Capacity for independent living. (7) Economic self-sufficiency." The last two major life activities are generally not taken into consideration when evaluating a young child such as claimant.

4. It is claimant's burden to prove that he has a developmental disability, as that term is defined in the Lanterman Act.

5. It is undisputed that claimant meets the diagnostic criteria for autism spectrum disorder, an eligible condition, and that he has significant functional limitations, relative to his peers, in self-care and self-direction. These limitations are directly related to his autism.

6. The evidence failed to establish that claimant has significant functional limitation in a third relevant area of major life activity. Although claimant receives speech and language special education services, the evidence did not establish significant functional limitation in expressive and receptive speech. In addition, although claimant's autism-related behavioral issues interfere with his learning throughout the school day, his standardized test scores and academic performance demonstrate that he does not have a significant functional limitation in learning, at this time. There was no evidence that claimant has any limitation in his mobility. Claimant has not established that he is substantially disabled, within the meaning of the Lanterman Act.

7. Accordingly, claimant has failed to meet his burden of establishing that he is eligible for regional center services at this time.

ORDER

Claimant's appeal is denied.

DATE:

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.